

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLAY L. BESTER and U.S. POSTAL SERVICE,
POST OFFICE, Detroit, Mich.

*Docket No. 96-2234; Submitted on the Record;
Issued September 15, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has established that he had continuing disability causally related to his accepted July 11, 1994 employment injury after May 19, 1995.

In the present case, the Office of Workers' Compensation Programs accepted that appellant, a tractor trailer operator, sustained contusion of the right rib, left knee effusion and lumbar strain after tripping over a guard rail on July 11, 1994. Appellant's physician, Dr. Laran Lerner, a specialist in preventative medicine, reported that appellant was totally disabled due to the employment injury. The Office subsequently referred appellant to Dr. William Gonte, Board-certified in internal medicine, for a second opinion medical evaluation. The Office terminated appellant's compensation benefits by decision dated May 19, 1995, based upon Dr. Gonte's reports, on the grounds that the evidence of record demonstrated that appellant's employment-related disability had ceased.

In support of a request for reconsideration dated April 18, 1996, appellant submitted a narrative report from Dr. Lerner dated March 29, 1996. The Office denied appellant's request for reconsideration, after merit review, on June 19, 1996.

The Board finds that this case is not in posture for decision as a conflict exists in the medical opinion evidence as to whether appellant had continuing disability for work after May 19, 1995 due to the accepted employment injury.

In his report dated January 26, 1995, Dr. Gonte reported that appellant's rib injury had completely resolved as appellant was nontender to palpation and had no other abnormalities of the sternum. Regarding appellant's back, he noted that appellant had a normal physical examination and there was no objective evidence of radiculopathy. Dr. Gonte stated that he did not feel any further testing or treatment was necessary for appellant's back condition. Finally, regarding appellant's left knee condition Dr. Gonte stated that he would recommend a magnetic resonance imaging (MRI) scan of the knee to rule out internal derangement. Dr. Gonte also

opined that appellant return to light-duty work and regular work two weeks thereafter. Appellant underwent an MRI examination of the left knee on February 12, 1995. In a supplemental report dated February 27, 1995, Dr. Gonte stated that the MRI of the left knee revealed degenerative joint changes of the knee, effusion, osteochondral loose body, a torn medial collateral ligament anteriorly with chronic changes, a torn ACL, torn anterior horn of the medial meniscus and posterior horn of the lateral meniscus, as well as osteonecrosis of the lateral femoral condyle. Dr. Gonte stated that these MRI findings were consistent with his examination and consistent with an old AL tear and degenerative changes preexisting the July 1994 employment injury. Dr. Gonte stated that appellant's "recent knee problems seem to be a flair up of such." In another supplemental report dated April 5, 1995, Dr. Gonte explained that appellant's MRI findings and his physical examination findings were all due to a previous injury and not his July 11, 1994 employment injury. Dr. Gonte explained that he had found that appellant had reached the baseline he was at prior to the July 11, 1994 incident. Dr. Gonte stated that he would still recommend that appellant be evaluated by an orthopedic surgeon and possibly undergo arthroscopy, but this was due to a previous knee injury that was neglected and not previously addressed. Dr. Gonte concluded that appellant could return to work with the use of a knee brace and limited ambulation, with no repetitive bending at the knee, but the appellant should be able to drive a tractor/trailer and carry a full work load.

In a report dated March 29, 1996, Dr. Lerner, appellant's treating physician, noted extensively appellant's MRI findings and thereafter stated that appellant had severe internal derangement of the left knee, which was progressive and would probably require a left total knee arthroplasty. Dr. Lerner stated that appellant had a twisting injury to his left knee on July 11, 1994 and that this was the type of injury that would cause the meniscus and ligamentus damage and aggravate any underlying arthritis of the left knee and it was the type of mechanical trauma that would cause the joint effusion. Dr. Lerner also noted that appellant had injured his back when he tripped over the guard rail and that appellant had moderate degenerative changes involving the intervertebral facet joints bilaterally at L4-5 and L5-S1 on x-ray and lumbosacral radiculopathy confirmed on electromyogram study. Dr. Lerner opined that Dr. Gonte obviously saw the abnormality on clinical examination of appellant's knee and low back, but tried to minimize the abnormalities. Dr. Lerner stated that appellant's conditions were obviously recent post-traumatic injuries. Finally, he noted that if appellant had experienced the severe injury with his left knee and back prior to the injury on July 11, 1994, he would not have been able to work as a truck driver and tractor trailer operator, which required repetitive bending, lifting of mail, loading and unloading of mail from the truck of weight exceeding 70 pounds and rolling mail in containers on and off the trucks. Dr. Lerner concluded that appellant remained disabled from his previous employment.

Section 8123(a) of the Federal Employees' Compensation Act¹ provides that if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.²

¹ 5 U.S.C. § 8123(a).

² See *George E. Reilly*, 44 ECAB 343 (1992).

The Board finds that there is a conflict in the medical opinion evidence between Dr. Gonte and Dr. Lerner. These physicians have provided contradictory medical interpretations to appellant's objective findings. While Dr. Gonte has opined that appellant's accepted conditions have reached their preinjury baseline and no longer disable appellant; Dr. Lerner has explained that appellant's conditions have progressed due to the employment injury and do continue to disable appellant. Therefore, to resolve this conflict of medical opinion evidence the Office shall refer appellant to an impartial medical specialist. The impartial medical specialist shall provide an opinion as to whether appellant's accepted conditions have continued to disable appellant after May 19, 1995. After such further development of the medical evidence as necessary, the Office shall issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated June 19, 1996 is hereby set aside and this case is remanded to the Office for further proceedings consistent with this opinion.

Dated, Washington, D.C.
September 15, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member